

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

First Named Inventor: BRUGGER, JAMES M.

Art Unit: 3761

Appln. No.: 10/796,913

Examiner: Hand, Melanie Jo

Filed: March 8, 2004

Confirmation No.: 1674

For: REGISTRATION OF FLUID CIRCUIT COMPONENTS IN A BLOOD
TREATMENT DEVICE

* * *

RENEWED PETITION UNDER 37 C.F.R. § 1.78(a)(3)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This renewed petition is submitted in response to the Decision on Petition Under 37 C.F.R. § 1.78(a)(3), dated March 28, 2008. Reconsideration of the petition to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed U.S. Patent Application No. 09/451,238, filed November 29, 1999, is respectfully requested.

The Decision on Petition dismissed the instant petition, alleging that the petition was not accompanied by all of the required elements for a grantable petition under 37 C.F.R. § 1.78(a)(3). Specifically, the Decision recited that a grantable petition under 37 C.F.R. § 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

The Decision alleged that the instant petition did not comply with items (1) and (3).

As to item (1), the Decision held that the reference to the prior application in a benefit claim under 35 U.S.C. § 120 submitted after filing cannot include an incorporation by reference statement of the prior application. Accordingly, this renewed petition is accompanied by an Amendment to remove the incorporation by reference language with regard to U.S. Patent Application No. 09/451,238.

As to item (3), the Decision questioned whether the Petitioner herein was in a position to know whether the entire delay between the date the claim was due and the date the claim was filed was unintentional. Accordingly, Petitioner has made a reasonable investigation of the facts and circumstances regarding the delayed benefit claim. In view of the investigation, it is acknowledged that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. § 1.78 and the date the claim was filed was unintentional.


In view of the remarks presented herein, it is respectfully requested that the Decision dismissing the petition be withdrawn and that this petition now be granted.

Should the Examiner believe that any further action is necessary to place this petition in better form for being granted, the Examiner is invited to contact Applicants' representatives at the telephone number listed below.

The Commissioner is hereby authorized to charge Deposit Account No. 50-1165 (T4342-14198US18) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

Date: 8/20/08

By: 
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